

## § 532.249

§ 532.203 and, if appropriate, § 532.205 of this subpart.

(2) The lead agency shall consult with the agency wage committee in accordance with § 532.243 of this subpart.

(3) Records of this process shall be maintained in accordance with § 532.245(b) of this subpart.

(h) The wage schedules shall be issued and authorized in accordance with § 532.245 (c) and (d) of this subpart.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990; 58 FR 32274, June 9, 1993]

### § 532.249 Minimum rates for hard-to-fill positions.

(a) The lead agency for a wage area may establish the rate of the second, third, fourth, or fifth step of one or more grades of an occupation as the mandatory minimum rate or rates payable by any agency for the occupation at one or more locations within a wage area based on findings that:

(1) The hiring rates prevailing for an occupation in private sector establishments in the wage area are higher than the rate of the first step of the grade or grades of the occupation; and

(2) Federal installations and activities in the wage area are unable to recruit qualified employees at the rate of the first step of the grade or grades of the occupation.

(b) Any authorizations made under paragraph (a) of this section shall be indicated on the regular wage schedule for the wage area.

(c) Any authorizations made under paragraph (a) of this section shall be terminated with the issuance of a new regular wage schedule unless the conditions that warrant the authorizations continue and the new regular wage schedule continues that authorization.

(d) The lead agency, prior to terminating any authorization made under paragraph (a) of this section, shall require the appropriate official or officials at all installations or activities to which the authorization applies to discuss the termination with the appropriate official or officials of exclusively recognized employee organizations representing employees in the affected occupation. The agency officials shall report the results of these discussions to the lead agency.

## 5 CFR Ch. I (1–1–01 Edition)

(e) No employee shall have his/her pay reduced because of cancellation of an authorization made under paragraph (a) of this section.

[46 FR 21344, Apr. 10, 1981. Redesignated at 55 FR 46141, Nov. 1, 1990]

### § 532.251 Special rates.

(a) A lead agency, with the approval of OPM, may establish special rates for use within all or part of a wage area for a designated occupation or occupational specialization and grade, in lieu of rates on the regular schedule. OPM may authorize special rates to the extent it considers necessary to overcome existing or likely significant handicaps in the recruitment or retention of well-qualified personnel when these handicaps are due to any of the following circumstances:

(1) Rates of pay offered by private sector employers for an occupation or occupational specialization and grade are significantly higher than those paid by the Federal Government within the competitive labor market;

(2) The remoteness of the area or location involved; or

(3) Any other circumstances that OPM considers appropriate.

(b) In authorizing special rates, OPM shall consider—

(1) The number of existing or likely vacant positions and the length of time they have been vacant, including evidence to support the likelihood that a recruitment problem will develop if one does not already exist;

(2) The number of employees who have or are likely to quit, including the number quitting for higher pay positions and evidence to support the likelihood that employees will quit;

(3) The number of vacancies employing agencies tried to fill and the number of hires and offers made;

(4) The nature of the existing labor market;

(5) The degree to which employing agencies have considered or used increased minimum rates for hard-to-fill positions;

(6) The degree to which employing agencies have considered relevant non-pay solutions to the staffing problem, such as conducting an aggressive recruiting program, using appropriate appointment authorities, redesigning

jobs, establishing training programs, and improving working conditions;

(7) The impact of the staffing problem on employers' missions;

(8) The level of private sector rates paid for comparable positions; and

(9) As appropriate, the extent to which the use of unrestricted rates authorized under § 532.801 of this part was considered.

(c) In determining at what level to set special rates, OPM shall consider—

(1) The level of rates it believes necessary to recruit or retain an adequate number of well-qualified persons;

(2) The offsetting costs that will be incurred if special rates are not authorized; and

(3) The level of private sector rates paid for comparable positions.

(d) No one factor or combination of factors specified in paragraphs (b) or (c) of this section requires special rates to be established or to be adjusted to any given level. Each request to establish special rates shall be judged on its own merits, based on the extent to which it meets these factors. Increased minimum rates are not a prerequisite to the establishment of special rates under this section.

(e) Special rates shall be based on private sector wage data, or a percentage thereof, as specified by OPM at the time the special rates are authorized. The private sector data shall be calculated as a weighted average or percentile, as appropriate. A single rate shall be used when this represents private sector practice, and five rates shall be used when rate ranges are used by the private sector. When a five-step rate range is used, the differentials between steps shall be set in accordance with § 532.203(f) of this subpart.

(f) Once approved by OPM, special rates may be adjusted by the lead agency on the same cycle as the applicable regular schedule to the extent deemed necessary to ensure the continued recruitment or retention of well-qualified personnel. The amount of the special rate adjustment may be up to the percentage (rounded to the nearest one-tenth of 1 percent) by which the market rate has changed since the last adjustment. Special rates may not exceed the percentage of market rates initially approved by OPM unless a re-

quest for higher special rates is made and approved under paragraphs (a) through (e) of this section.

(g) Any special rates established under paragraph (a) of this section shall be shown on the regular schedule or published as an amendment to the regular schedule and shall indicate the wage area (or part thereof) and each occupation or occupational specialization and grade for which the rates are authorized. These rates shall be paid by all agencies having such positions in the wage area (or part thereof) specified.

(h) The scheduled special rate payable under this section may not, at any time, be less than the unrestricted (uncapped) rate otherwise payable for such positions under the applicable regular wage schedule.

(i) If a special rate is terminated under paragraph (f) of this section, the lead agency shall provide written notice of such termination to OPM.

(j) Employers using special rates shall maintain current recruitment and retention data for all authorized special rates. Such data shall be made available to the lead agency prior to the wage area regular schedule adjustment date for the purpose of determining whether there is a continuing need for special rates and the amount of special rate adjustment necessary to recruit or retain well-qualified employees.

[57 FR 57875, Dec. 8, 1992]

**§ 532.253 Special rates or rate ranges for leader, supervisory, and production facilitating positions.**

(a) When special rates or rate ranges are established for nonsupervisory positions, a lead agency also shall establish special rates for leader, supervisory, and production facilitating positions, classified to the same occupational series and title, that lead, supervise, or perform production facilitating work directly relating to the non-supervisory jobs covered by the special rates.

(b) The step rate structure shall be the same as that of the related non-supervisory special rate or rate range.

(c) The following formulas shall be used to establish a special rate or rate range: